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No. 04-1144

Supreme Court, U.S.
FILED
AUG 4 - 2005
OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

KELLY AYOTTE, ATTORNEY GENERAL OF NEW HAMPSHIRE,

Petitioner,

v.

PLANNED PARENTHOOD OF NORTHERN NEW ENGLAND,
CONCORD FEMINIST HEALTH CENTER,
FEMINIST HEALTH CENTER OF PORTSMOUTH, AND
WAYNE GOLDNER, M.D.,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the First Circuit

BRIEF *AMICUS CURIAE* OF THE THOMAS MORE SOCIETY IN SUPPORT OF PETITIONER

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August 4, 2005

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Interest of *Amicus Curiae*[*]

The Thomas More Society is a non-sectarian 501(c)(3) public charity based in Chicago, Illinois, and is incorporated as an Illinois not-for-profit corporation. Founded in 1997, the Thomas More Society was established to help meet the burgeoning legal needs of the pro-life movement and, in particular, to defend those who face legal battles as a result of their commitment to the protection of basic civil rights for the most vulnerable and defenseless members of our society, innocent prenatal human beings. The Thomas More Society provides legal advice and assistance to those who face harassment, employment discrimination, unjust treatment or prosecution as a result of their pro-life position.

Consistent with its mission and the respect for human life which that mission implies, the Thomas More Society opposes abortion and supports parental involvement laws. The New Hampshire Parental Notification Prior to Abortion Act, N.H. REV. STAT. § 132:24 *et seq.* (Supp. 2004), is intended to promote the State's "important and compelling . . . interests of protecting minors against their own immaturity, fostering the family structure and preserving it as a viable social unit, and protecting the rights of parents to rear children who are members of their household." 2003 N.H. Laws, ch. 173:1, § I. The Court has long recognized the legitimacy of these reasons. *See Bellotti v. Baird*, 443 U.S. 622, 634 (1979) (plurality op.) (referring to "the peculiar vulnerability of children; their inability to make critical decisions in an informed, mature manner; and the importance of the parental role in child rearing"). To assist the Court in addressing the issues presented, *amicus* submits this brief.

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[*] Letters of consent have been filed with the Clerk. None of the counsel for the parties authored this brief in whole or in part, and no one other than *amicus* or its counsel has contributed money or services to the preparation or submission of this brief.

SUMMARY OF ARGUMENT

Respondents, three abortion clinics and a physician who performs abortions, challenged the New Hampshire Parental Notification Prior to Abortion Act, N.H. REV. STAT. § 132:24 *et seq*. (Supp. 2004). Respondents' principal claim was that the Act is unconstitutional because it does not contain a medical emergency exception excusing compliance with the law in those circumstances where the delay in performing the abortion could result in serious risk of injury to the pregnant minor's physical health. *See* Complaint, ¶¶ 2, 24-26, 31(a). In a related claim, respondents alleged that the Act is invalid because the exception in Act excusing compliance with the notice requirement when the abortion is "necessary to prevent the minor's death and there is insufficient time to provide the required notice," § 132:26(I)(a), is too narrow. *Id*. ¶¶ 3, 27-29, 31(b). Based on these allegations and the declarations respondents introduced in support of their Motion for Preliminary Injunction, the district court declared the Act unconstitutional on its face and enjoined enforcement of the Act in its entirety. *Planned Parenthood of Northern New England v. Heed*, 296 F.Supp.2d 59 (D. N.H. 2003). The court of appeals affirmed. *Planned Parenthood of Northern New England v. Heed*, 390 F.3d 53 (1st Cir. 2004).[1]

The lower court's judgment should be reversed. First, none of the respondents has the requisite standing to challenge the absence of a physical health exception in the Act or the adequacy of the life exception. Even assuming that respondents possess third-party standing to represent the interests of their patients, respondents neither alleged nor proved that they have ever performed medical emergency abortions on pregnant minors in the past. Nor did they allege that they would perform such abortions in the future. Hence, respondents failed to allege and prove the threshold requirement of standing under art. III, § 2, "injury-in-fact." *See Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 103 (1998).

Second, assuming that respondents have standing to challenge the Act on behalf of pregnant minor patients who would allegedly need medical emergency abortions, and that a medical emergency exception is constitutionally required, the relief provided by the lower court was overbroad. The Act mandates severance of invalid *applications*, as well as severance of invalid *provisions*. *See* N.H. REV. STAT. § 132:28 (Supp. 2004). Neither the district court nor the court of appeals followed this clear and unambiguous expression of legislative intent. "Severability is of course a matter of state law." *Leavitt v. Jane L.*, 518 U.S. 137, 139 (1996). The failure of either the district court or the court of appeals to limit the scope of the relief provided respondents is particularly egregious when it is considered that virtually no medical emergency abortions are performed on pregnant minors. This is confirmed indirectly by respondents' failure to allege that they have ever performed such abortions and by the failure of other abortion providers to challenge parental laws similar to New Hampshire's, and directly by the overwhelming weight of statistical data available from those States that require physicians to report medical emergency abortions involving pregnant minors. Thus, even assuming that an adequate medical emergency exception is constitutionally required, the lower court should have declared the Act unconstitutional in part, not on its face, and enjoined the Act *only* to the extent that it does not permit medical emergency abortions.

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[1] Neither the district court nor the court of appeals reached respondents' claim, *see* Complaint, ¶¶ 4, 22-23, 31(c), that the Act does not ensure confidentiality of the judicial bypass hearing. With respect to issues not discussed in this Brief, *amicus curiae* generally adopts Petitioner's Brief.

ARGUMENT

I. RESPONDENTS LACK STANDING TO CHALLENGE THE ABSENCE OF A PHYSICAL HEALTH EXCEPTION OR THE ADEQUACY OF THE LIFE EXCEPTION IN NEW HAMPSHIRE'S PARENTAL NOTICE ACT.

Respondents lack standing to challenge either the absence of a physical health exception or the adequacy of the life exception in New Hampshire's parental notice act. Respondents neither alleged nor proved that they perform (or intend to perform) medical emergency abortions on minors. Accordingly, their challenge to the act on those grounds should have been dismissed for lack of standing.

There are three requirements that constitute the "irreducible constitutional minimum of standing" under art. III, § 2:

> First and foremost, there most be alleged (and ultimately proved) an injury in fact–a harm suffered by the plaintiff that is concrete and actual or imminent, not conjectural or hypothetical. Second, there must be causation–a fairly traceable connection between the plaintiff's injury and the complained-of-conduct of the defendant. And third, there must be redressability–a likelihood that the requested relief will redress the alleged injury. This triad of injury in fact, causation, and redressability constitutes the core of Article III's case-or-controversy requirement, and the party invoking federal jurisdiction bears the burden of establishing its existence.

Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 102-04 (1998) (citations and internal quotation marks omitted). If a plaintiff fails to prove any one of these requirements, a court must dismiss the case for lack of standing. *Id.*

Respondents have failed to allege and prove the first requirement, injury-in-fact, with respect to their claims that the parental notice act is invalid because it has no physical health exception and because the life exception is inadequate. *See* Complaint, ¶¶ 2, 3, 31(a), -(b). Respondents neither alleged nor proved that they had ever had a minor pregnant patient for whom a medical emergency abortion was necessary to preserve her physical health or save her life. Nor did they allege that they would perform a medical emergency abortion if presented with a minor patient for whom such an abortion was, in their view, necessary. Accordingly, their claims should have been dismissed for lack of standing.

Respondents alleged that among their patients are "unemancipated women under the age of eighteen who need abortions." Complaint, ¶¶ 8, 9, 10, 11. Respondents, however, did not specify the reasons for which their patients "need" abortions, nor did they allege that the abortions were necessary because of medical emergencies. Respondents did identify a number of "urgent medical situations that require a prompt abortion to be provided to protect the health of the woman." *Id.*, ¶ 25. Those situations include "premature rupture of the membranes that enclose the pregnancy; pre-eclampsia; and significant bleeding from the uterus in early pregnancy." *Id.* Respondents claimed that for patients with these conditions, "delaying the procedure in order to comply with the parental notification requirements of the statute or for the minor to obtain a court waiver, would pose dangers to the minor's health, including the dangers of infertility, vision loss, chronic pain, or kidney or liver damage." *Id.* Respon-

dents, however, did *not* aver that they had ever had any minor pregnant patients for whom an "urgent medical situation[]" required "a prompt abortion," *id.*, or that they would perform an "urgent medical situation" abortion on a pregnant minor.

Respondents complained further that the statutory exception for an abortion that is "necessary to prevent the minor's death and there is insufficient time to provide the required notice," § 132:26(I)(a), "endangers even those minors in need of life-saving abortions." Complaint, ¶ 27. "[P]hysicians will not be able to rely on this exception," respondents claimed, "[b]ecause a physician cannot accurately predict when a minor's condition has progressed to the point where she will die within the time it takes to comply with the Act's requirements, ..." *Id.* Physicians, therefore, will be required "to use procedures [other than abortion] to stave off death that could cause long term impairment of the minor's health." *Id.*, ¶ 28. As in the case of medical emergency abortions performed to preserve the pregnant minor's physical health, however, respondents did not aver that they had ever had any minor patients for whom a "life-saving abortion[]" was necessary, *id.*, ¶ 27, or that they would perform a "life-saving" abortion on a pregnant minor.

None of the deficiencies in respondents' complaint was cured by their declarations. Dr. Goldner identified a number of conditions that could, in his judgment, require an immediate abortion to avoid serious harm to a pregnant woman's health in certain circumstances. *See* Goldner Declaration, ¶¶ 8-15. Those conditions include preeclampsia; eclampsia; premature rupture of the membranes surrounding the fetus, which may lead to chorioamnionitis (a serious infection of the placental lining) and systemic sepsis; spontaneous chorioamnionitis (unrelated to premature rupture of the membranes); pelvic infections and heavy bleeding from the

uterus. *Id.* Although Dr. Goldner has been performing abortions for more than twenty years (*id.*, at ¶ 2), he did *not* aver that he had ever had a minor patient for whom a medical emergency abortion was necessary for any of these reasons. Nor, despite his dissatisfaction with the life exception in the statute, *see id.*, ¶¶ 16-19, did he aver that he had ever had a minor patient for whom a medical emergency abortion was necessary to save her life. Dr. Goldner did not state that, apart from the law, he would perform a medical emergency abortion on a minor to preserve her life or physical health.

Rachel Atkins is the Vice-President for Medical Services for Planned Parenthood of Northern New England and a physician's assistant. As a physician's assistant, Ms. Atkins performed first-trimester abortions for fifteen years (from 1981 to 1995), apparently in Vermont. Atkins Declaration, ¶ 3. Since 1987, she has supervised the provision of medical services, including abortions, first at the Vermont Women's Health Center and later at Planned Parenthood of Northern New England. *Id.* Ms. Atkins complained of the statute's lack of a medical emergency exception because, in her view, delay in obtaining the abortion "to comply with the notice requirements or to get a judicial bypass would seriously threaten a young woman's health" in certain circumstances. *Id.*, ¶ 10. Despite her experience as a physician's assistant in performing abortions and as an administrator in managing the provision of abortion services, Ms. Atkins did *not* aver that she had ever had or even known of a minor patient for whom a medical emergency abortion was necessary (respondents' third declarant was an attorney who submitted a declaration regarding the operation of judicial bypass hearings).

It is apparent from an examination of respondents' complaint and their declarations that they lack standing to challenge the absence of a health exception or the adequacy

of the life exception in New Hampshire's parental notice statute. Neither in their complaint nor in their declarations did respondents claim that they have ever had minor patients for whom a medical emergency abortion was necessary or that they would even perform such abortions.[2] Their claims should have been dismissed for lack of standing.[3]

Article III, § 2's "case or controversy" requirement applies to abortion cases no less than other cases. In *Roe v. Wade*, 410 U.S. 113 (1973), the Court affirmed the dismissal, for lack of standing, of a childless married couple's challenge to the Texas abortion statutes where the wife was not pregnant and had no present intention of becoming pregnant. The couple claimed that, in the event of contraceptive failure, the wife might become pregnant and, at that time, might want to obtain an abortion that would be illegal under Texas law. 410 U.S. at 128. The Court found that the couple's claim was "speculative." "Their alleged injury rests on possible future contraceptive failure, possible future pregnancy, possible future unpreparedness for parenthood, and possible future impairment of health. Anyone or more of these several possibilities may not take place and all may not combine." *Id.* The Court held that the "bare allegation" that "these possibilities might have some real or imagined impact upon their marital happiness" was simply too "indirect an injury . . . to present

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[2] Emergency abortions normally would be performed in a hospital, not a clinic, yet, no hospital is a party to this case. Respondents neither alleged nor proved that they treat or intend to treat pregnant minor patients with any of the conditions described by Dr. Goldner.

[3] Nothing in the Court's analysis of the definition of the medical emergency exception in *Planned Parenthood v. Casey*, 505 U.S. 833 (1992), relieves respondents of their obligation to allege and prove "injury-in-fact" here. In *Casey*, the plaintiffs' standing to challenge the adequacy of the medical emergency definition was not challenged.

an actual case or controversy." *Id.* So too, in the case at bar, it is utterly speculative whether any of the respondents will ever be confronted with a medical emergency abortion.

Again, in *Harris v. McRae*, 448 U.S. 297 (1980), the Court refused to reach the merits of a free exercise of religion challenge to the Hyde Amendment (restricting federal funding of abortion) brought by, *inter alia*, two women who "failed to allege either that they are or expect to be pregnant or that they are eligible to receive Medicaid." 448 U.S. at 320. These plaintiffs, the Court held, "lack the personal stake in the controversy needed to confer standing to raise such a challenge to the Hyde Amendment." *Id.* Finally, in *H.L. v. Matheson*, 450 U.S. 398 (1981), the Court held that a pregnant minor lacked standing to challenge a parental notice statute as overbroad, "in that it [could] be construed to apply to all unmarried minor girls, including those who are mature and emancipated," where the minor "did not allege or proffer any evidence that either she or any member of her class [was] mature or emancipated." *Id.* at 405-06.

The reasoning of the foregoing cases is directly applicable to the present case. Respondents did not allege or prove that they perform (or even intend to perform) medical emergency abortions on pregnant minor patients. In the absence of proof that respondents perform (or intend to perform) such abortions, their expressed concerns about the impact of the statute on the lives and health of pregnant minors are entirely speculative. There is certainly no "injury-in-fact," *i.e.*, " harm suffered by the plaintiff that is concrete and actual or imminent, not conjectural or hypothetical." *Steel Co. v. Citizens for a Better Environment*, *supra*, 523

U.S. at 103.[4]

The speculative nature of respondents' claims is underscored by the dearth of evidence that medical emergency abortions are performed on pregnant minors, either in States without such exceptions or in States with such exceptions.

States without Medical Emergency Exceptions

At least four States–Arkansas, Minnesota, Missouri and North Dakota–have parental notice or consent laws on the books which are in force and which do *not* contain a medical emergency exception (other than, in the case of Arkansas, Minnesota and North Dakota, the life of the

[4] The court of appeals dismissed the concerns raised about respondents' standing in a footnote. *See* 390 F.3d at 56 n.2. The lower court, however, failed to recognize that neither Dr. Goldner nor the respondent clinics perform (or express an interest in performing) medical emergency abortions on pregnant minors. Contrary to the implications of the lower court's standing analysis, the mere ability to hypothesize circumstances under which a medical emergency abortion might be necessary does not confer standing on *these* respondents to challenge the absence of a physical health exception and the adequacy of the life exception in the New Hampshire parental notice act. That is because respondents do not perform (or intend to perform) medical emergency abortions. In determining that respondents possess the standing necessary to challenge the New Hampshire parental notice law on these grounds, the lower court ignored its own precedent. In *Rodos v. Michaelson*, 527 F.2d 582 (1st Cir. 1975), the First Circuit held that physicians who had no interest in performing abortions beyond the nineteenth or twentieth week of pregnancy lacked standing to challenge a statute that, by its terms, restricted abortions only after viability which, at the earliest, occurs at the twenty-third week of pregnancy. To allow the physicians' challenge to proceed, based on their unreasonable "fear" of the "chilling effect" the statute might have on their practice, would "emasculate[] principles of standing." 527 F.2d at 585.

mother).[5] The Court upheld Minnesota's parental notice statute (subject to a judicial bypass procedure) in *Hodgson v. Minnesota*, 497 U.S. 417 (1990), and Missouri's parental consent statute in *Planned Parenthood of Kansas City, Missouri, Inc. v. Ashcroft*, 462 U.S. 476, 490-93 (1983). Notwithstanding the absence of a medical emergency exception excusing compliance with the law for reasons relating to the mother's health, none of these statutes has been declared unconstitutional on this ground and, with the possible exception of the Minnesota statute, none has even been challenged on this basis. This is of particular significance when it is considered that the Arkansas and Minnesota laws have been in effect for more than fifteen years, and the Missouri and North Dakota laws for more than twenty years. That these laws have been in force for so many years without even an as-applied challenge strongly suggests that medical emergency abortions are seldom, if ever, performed on pregnant minors.

States with Medical Emergency Exceptions

In contrast to Arkansas, Minnesota, Missouri and North Dakota, most States that have enacted parental notice or consent statutes make exceptions for medical emergencies

[5] *See* ARK. CODE ANN. § 20-16-801 *et seq.* (Michie 2000) (two-parent notice); MINN. STAT. ANN. § 144.343 (West Supp. 2005) (two-parent notice); MO. ANN. STAT. § 188.028 (West 2004) (one-parent consent); N.D. CENT. CODE § 14-02.1-03.1 (2004) (one-parent consent). Compliance with the requirements of the Arkansas, Minnesota and North Dakota statutes is excused in emergency situations where the life of the pregnant minor would be endangered by delay in performing the abortion. *See* ARK. CODE ANN. § 20-16-805(1); MINN. STAT. ANN. § 144.343, subd. 4(a) (West Supp. 2005); N.D. CENT. CODE § 14-02.1-03.1(12). The Arkansas statute has been amended recently to require parental consent, as opposed to notice, and to include a Pennsylvania-style medical emergency exception. *See* 2005 ARK. ACTS 537.

which include both the life of the mother and her health (variously defined). Although the majority of these States do not require physicians to identify medical emergencies on the reporting forms they are required to submit to state public health departments, a minority of them do and the statistical data available from these States provides compelling evidence that medical emergency abortions are almost never performed on pregnant minors.

Alabama

Alabama enacted its parental consent statute in 1987. *See* ALA. CODE, § 26-21-1 *et seq*. (1992). The statute, which requires the consent of one parent (or the legal guardian) of an unemancipated minor under the age of 18 years before an abortion may be performed on her, does not apply "when, in the best clinical judgment of the attending physician on the facts of the case before him, a medical emergency exists that so compromises the health, safety or well-being of the mother as to require an immediate abortion." *Id*. § 26-21-5. "A physician who does not comply with [the parental consent requirement] by reason of this exception shall state in the medical record of the abortion, the medical indications on which his judgment was based." *Id*. Medical emergency abortions must be reported to the Bureau of Vital Statistics. *Id*. § 26-21-8(c)(3).

Between 1988, the first full year the parental consent laws was in effect, and 2003, the last year for which data is available, more than 20,000 abortions were performed on minors in Alabama. In eight of those sixteen years, including the last four years (2000-2003), not a single medical emergency was reported (out of 9,613 abortions performed on minors). In each of seven other years, there was only one reported medical emergency (out of 9,893 abortions), and in

one year (1999), there were two (out of 1,045 abortions).[6]

Idaho

Idaho enacted a parental consent statute in 2000. *See* IDAHO CODE § 18-609A (2004). The statute requires the consent of one parent (or the legal guardian) of an unemancipated minor before an abortion may be performed on her unless, *inter alia*, "[a] medical emergency exists for the minor so urgent that there is insufficient time for the physician to obtain the informed consent of a parent or court order and the attending physician certifies such in the pregnant minor's medical records." *Id*. 18-609A(1)(a)(v).[7] Under the statute as originally enacted, a "medical emergency," for purposes of this exception, meant "a sudden and unexpected physical condition which, in the reasonable medical judgment of any ordinarily prudent physician acting under the circumstances and conditions then existing, is abnormal and so complicates the medical condition of the pregnant minor as to necessitate the immediate causing or performing of an abortion: 1. To prevent her death; or 2. Because delay in causing or perform-

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[6] *See* Alabama Department of Public Health, Bureau of Vital Statistics, Selected Induced Termination of Pregnancy Data: Women Under 18 Years of Age, Alabama, January-December, 1988, Final Data; Alabama Department of Public Health, Center for Health Statistics, Selected Induced Termination of Pregnancy Data: Women Under 18 Years of Age, Alabama, Final Occurrence Data, 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997; Alabama Department of Public Health, Center for Health Statistics, Induced Terminations of Pregnancy Occurring in Alabama, 1998, 1999, 2000, 2001, 2002 & 2003. The data for 2001-2003 may also be found at the Center for Health Statistics' website http://ph.state.al.us/chs/Health.

[7] A "minor" is defined as "a woman less than eighteen (18) years of age." *Id*. § 18-609A(5)(d).

ing an abortion will create serious risk of immediate, substantial and irreversible impairment of a major physical bodily function of the patient." *Id.* § 18-609A(5)(c)(i).[8]

Under the Idaho statute, the vital statistics unit of the Department of Health & Welfare is mandated to require "complete and accurate reporting of information relevant to each abortion performed upon a minor which shall include," *inter alia*, "[t]he professional judgment of the attending physician that the performance of the abortion was immediately necessary due to a medical emergency and there was insufficient time to obtain consent from a parent or a court order." *Id.* § 18-609A(4)(a)(i)(5). That information, in turn, is available to the public (without disclosure of any details that could lead to the identification of the patient). *See* §§ 18-609A(4)(a), 39-261 (2002).[9]

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[8] The term "medical emergency" did not include "1. Any physical condition that would be expected to occur in normal pregnancies of woman of similar age, physical condition and gestation; or 2. Any condition that is predominantly psychological or psychiatric in nature." *Id.* § 18-609A(5)(c)(ii). The definition of "medical emergency" was declared unconstitutional in *Planned Parenthood of Idaho, Inc. v. Wasden*, 376 F.3d 908, 924-35 (9th Cir. 2004), *cert. denied*, 125 S.Ct. 1694 (2005), and was later amended. *See* 2005 Idaho Sess. Laws ch. 393, § 2. The district court had interpreted the definition to be consistent with the medical emergency definition upheld in *Planned Parenthood v. Casey*, *see* p. 8, n. 3, *supra*, and "[o]n this basis, upheld the emergency provision in its entirety." *Wasden*, 376 F.3d at 915. The medical emergency definition under the original law was in force until the Ninth Circuit's decision on July 16, 2004.

[9] Rule 201 of the Federal Rules of Evidence permits a court to take judicial notice of facts "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." FED. R. EVID. 201(b)(2). Judicial notice may be taken "at any stage of the proceedings," FED. R. EVID. 201(f), including on appeal. *See United States v. Gonzalez*, 442 F.2d 698, 708 n. 8 (2d Cir. 1971) (*en banc*), *cert. denied*, 404 U.S. 845 (1971) (taking judicial notice on appeal of Department of Narcotics and Dangerous Drugs reports on the thefts of legally possessed cocaine). In *Kottle v. Northwest Kidney Centers*, 146 F.3d 1056, 1064 n. 7 (9th Cir. 1998), the Ninth Circuit took judicial notice on appeal of public records of the state department of health, which is precisely the nature of the data *amicus* brings to the Court's attention in this Brief. In *Barber v. Ponte*, 772 F.2d 982 (1st Cir. 1985) (*en banc*), *cert. denied*, 475 U.S. 1050 (1986), the First Circuit took judicial notice of census data and health statistics, including abortion reporting data, for the first time on appeal. *Id.* at 998-99 & nn. 4-16. Documents authenticating data discussed in the Brief that are not available in official publications of state health departments or on their websites are included in the appendices.

From October 1, 2000, through December 2003 (the most recent date for which final data is available), 193 abortions were performed on minors (women under 18 years of age). None of those abortions was performed because of a medical emergency. Preliminary data indicates that 69 abortions were performed on minors during 2004, none of which was performed because of a medical emergency. Thus, for the entire period of time for which data is available (October 1, 2000, through December 31, 2004), there was not a single report of a medical emergency abortion having been performed on a minor in Idaho.[10]

Nebraska

Nebraska enacted a parental notice statute in 1991. *See* NEB. REV. STAT. § 71-6901 *et seq.* (2001). The statute requires notification of one parent (or the legal guardian) of a "pregnant woman" before an abortion may be performed on

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[10] *See* Appendix A.

her. *Id.* § 71-6902[11] Notification is not required, however, if "[t]he attending physician certifies in writing that continuation of the pregnancy provides an immediate threat and grave risk to the life or health of the pregnant woman and there is insufficient time to provide the required notification." *Id.* § 71-6906(1).

Although Nebraska does not require reporting of medical emergencies excusing compliance with the parental notice statute, it does require reporting of medical emergencies excusing compliance with the informed consent statute. *See* NEB. REV. STAT § 28-327 (2003). Compliance with the informed consent statute is excused in the case of an "emergency situation," *id.* § 28-327, which is defined as "that condition which, on the basis of the physician's good faith clinical judgment, so complicates the medical condition of a pregnant woman as to necessitate the immediate abortion of her pregnancy to avert her death or for which a delay will create serious risk of substantial impairment of a major bodily function." *Id.* § 28-326(7).[12] Because the definition of "emergency situation" in the informed consent statute is narrower than the definition of "medical emergency" in the parental notice statute, any "emergency situation" that would excuse compliance with the former statute would necessarily

[11] A "pregnant woman" is defined, in relevant part, as "an unemancipated woman under eighteen years of age who is pregnant." *Id.* § 71-6901(5).

[12] This definition was adopted in 1993, following the Court's decision in *Planned Parenthood v. Casey*, *see* p. 8, n. 3, *supra*. *See* 1993 NEB. LAWS 274 (LB 110, § 1). Prior to 1993, an "emergency situation" meant "a condition exists that in the sound medical judgment of the physician the abortion should be performed without delay so as not to adversely affect the best physical or mental health of the woman." *Id.* (deleted text).

excuse compliance with the latter. The Nebraska Health and Human Services System requires physicians to report "[w]hether an emergency situation caused the physician to waive any of the requirements of section 28-327." *Id.* § 28-343(10) (2003).

From 1991, when the parental notice statute was enacted, through 2004, more than 5,500 abortions were performed on minors (women under the age of 18) in Nebraska.[13] During that fourteen-year period, only two "emergency situation" abortions (as defined by the informed consent law) were performed on women under the age of 18, one each in 1997 and 1998. For the other twelve years, including the last six years (1999-2004), not one "emergency situation" abortion was reported (out of 4,605 abortions performed on minors).[14]

South Carolina

South Carolina enacted a parental consent statute in 1990. *See* S.C. CODE ANN § 44-41-31 *et seq.* (Law. Co-op. 2002). The statute requires the consent of one parent (or the legal guardian, a grandparent or a person who has acted *in loco parentis*) of an unemancipated minor before an abortion may be performed on her. *Id.* § 44-41-31.[15] Another statute waives the consent requirement if "a physician determines

[13] *See* Nebraska Health and Human Services System, Statistical Report of Abortions, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003 and 2004. The data for abortions performed on minors is derived from Table 8 (page five) of each report.

[14] *See* Appendix B.

[15] A "minor" is defined as "a female under the age of seventeen." *Id.*, § 44-41-10(m).

that a medical emergency exists involving the life of or grave physical injury to the pregnant woman." *Id.* § 44-41-30(C)(1). Where a medical emergency exists, the physician performing the abortion must indicate on the reporting form the "circumstances waiving consent." *Id.* § 44-41-60.

Since 1997, South Carolina has required physicians to report to the Department of Health and Environmental Control any abortion performed on a minor where compliance with the parental consent law was waived because of a medical emergency. From 1997 through 2003 (the last full year for which statistics are currently available), 2,354 abortions were performed on minors. Not one of those abortions was performed because of a reported medical emergency.[16]

Texas

Texas enacted a parental notice statute that went into effect on January 1, 2000. *See* TEX. FAM. CODE § 33.001 *et seq.* (West 2002). The statute requires notice to one parent (or the legal guardian) of an unemancipated minor before an abortion may be performed on her. *Id.* § 33.002.[17] Notice is not required, however, if "the physician performing the abortion . . . concludes that on the basis of the physician's good faith clinical judgment, a condition exists that complicates the medical condition of the pregnant minor and necessitates the immediate abortion of her pregnancy to avert her death or to avoid a serious risk of substantial and irreversible impairment of a major bodily function." *Id.* § 33.002(a)(4)(A). In such

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[16] *See* Appendix C.

[17] An "unemancipated minor" includes a minor who is not married and who has not had the disabilities of minority removed. TEX. FAM. CODE § 33.001(5).

cases, the attending physician must certify in writing to the Texas Department of Health and in the patient's medical record "the medical indications supporting the physician's judgment that the circumstances described by Paragraph (A) exist." *Id.* § 33.002(a)(4)(B).

Between January 1, 2000, and December 31, 2003, 14,471 abortions were performed on minors.[18] Although data on the numbers of abortions performed on minors in 2004 and 2005 to date is not yet available, it is reasonable to assume that a comparable number of abortions were performed in 2004 as the average number of abortions performed from 2001 through 2003 (approximately 3,550 per year),[19] and half that many during the first six months of 2005 (1,775). Thus, between January 1, 2000, and the end of June 2005, almost 20,000 abortions were performed on minors in Texas. During that five and one-half year period, the Texas Department of State Health Statistics "received *no* Emergency Induced Abortion Certification forms from Texas physicians for reporting years 2000-2005 (to date)."[20]

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[18] *See* Texas Department of Health (now the Texas Department of State Health Services), Texas Vital Statistics, 2000, at 258; *id.*, 2001, at 258; *id.*, 2002, at 258. The preliminary data for 2003 may be found at http://www.tdh.state.tx.us/ chs/vstat/vs03/t33.htm.

[19] In estimating the number of abortions performed on minors in 2004 and the first half of 2005, *amicus* has averaged the number of abortions performed on minors for the three years period 2001 to 2003, and has excluded the number performed in 2000 because that number (3,830) was significantly higher than the highest number of abortions performed in the following three year period (3,573).

[20] Letter of June 28, 2005, from Marc Allen Connelly, Assistant General Counsel, Texas Department of State Health Services, to Joseph Pojman, Ph.D., Executive Director, Texas Alliance for Life (emphasis added). *See* Appendix D.

Wisconsin

Wisconsin enacted its parental consent statute in 1991. *See* WIS. STAT. ANN. § 48.375 (West 2003). The statute requires the consent of one parent (or the legal guardian or a grandparent, sibling or aunt or uncle) of an unemancipated minor before an abortion may be performed on her. *Id.* § 48.375(4)(a).[21] The consent requirement does not apply, however, "if the person who intends to perform or induce the abortion is a physician" and the physician believes, "to the best of his or her medical judgment based on the facts of the case before him or her, that a medical emergency exists that complicates the pregnancy so as to require an immediate abortion." *Id.* § 48.375(4)(b)(1). Medical emergencies must be reported to the Department of Health. *Id.* § 69.186(1)(j) (West 2003). The Department, in turn, is required "to publish annual demographic summaries of the information obtained under this section, ..." *Id.* § 69.186(2).

Since 1998, Wisconsin has required physicians performing abortions to indicate the reason for which consent was not legally required in any given case. Between 1998 and 2004, a period of seven years, 5,307 abortions were performed on minors.[22] Only two of those, both in 2001, were

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[21] A "minor" is defined as "a person who has not attained the age of 18 years, ..." *Id.*, § 990.01(20) (West Supp. 2004).

[22] *See* Reported Induced Abortions in Wisconsin 1998, p. 9, Table 4; 1999, p. 9, Table 4; 2000, p. 9, Table 4; 2001, p. 9, Table 4; 2002, p. 9, Table 4; 2003, p. 9, Table 4; and 2004, p. 6, Table 4. The first four reports (1998-2001) were published in printed form by the Bureau of Health Information, Division of Health Care Financing, Department of Health & Family Services. The last three reports (2002-2004) are available on the Department's website, http://www.dhfs.wisconsin.gov/stats/itop.htm.

performed because of a medical emergency that required an immediate abortion. There have been no reported medical emergency abortions performed on minors in any of the last three years for which data is available (2002-2004).

It is apparent from the foregoing statistical data that medical emergency abortions involving minors are so rare as to be almost non-existent. *No* medical emergency abortions have been reported in the last four years in Alabama, the last six years in Nebraska, the last three years in Wisconsin, or at any time under the Idaho (four years), South Carolina (seven years) and Texas (five and one-half years) statutes since physicians have been required to report emergency abortions. Almost *30,000* abortions were performed on minors in these six States during these years without even *one* reported medical emergency. There is no reason to believe that the experience in New Hampshire, a sparsely populated small State, would be any different. A federal court should not invalidate a state statute on its face "based on a worst case scenario that may never occur." *Ohio v. Akron Center for Reproductive Health*, 497 U.S. 502, 514 (1990) (refusing to invalidate a parental notice statute based on speculation as to how long a judicial bypass hearing and appeal might take in certain circumstances).[23] Yet, that is precisely what the court of appeals, in affirming the district court, did in this case.[24]

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[23] *See also Webster v. Reproductive Health Services*, 492 U.S. 490, 523-24 (1989) (O'Connor, J., concurring in part and concurring in the judgment) (in a facial challenge to a statute prohibiting the use of public facilities for the performance of abortions, the Court need not decide whether some "conceivable [but remote] applications of the ban would be unconstitutional where the ban clearly had some quite straightforward applications [that] would be constitutional").

[24] In *Stenberg. v. Carhart*, 530 U.S. 914 (2000), the Court struck down Nebraska's attempt to prohibit a rarely used abortion

Respondents lack standing to challenge the absence of a physical health exception and the adequacy of the life exception in the New Hampshire parental notice law. Accordingly, the lower court's judgment invalidating the law on those grounds must be reversed and the cause remanded with directions to dismiss respondents' claims for lack of standing.

II. ASSUMING THAT THE NEW HAMPSHIRE PARENTAL NOTICE ACT REQUIRES A MEDICAL EMERGENCY EXCEPTION, THE COURT OF APPEALS ERRED IN AFFIRMING THE DISTRICT COURT'S INJUNCTION ENJOINING THE ACT IN ITS ENTIRETY WHERE A MORE LIMITED INJUNCTION WOULD HAVE CURED THE ACT'S ALLEGED CONSTITUTIONAL INFIRMITIES.

Assuming that respondents have standing to challenge the New Hampshire parental notice act and that the Court further determines that the Act is otherwise invalid without a medical emergency exception that excuses compliance with the notice requirement where delay in performing the abortion would seriously jeopardize the pregnant's minor physical health or her life, then *amicus* submits that the lower courts should have entered a more limited declaration of unconstitutionality and issued a narrower injunction, consistent with the express severability language of the act.

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technique (partial-birth abortion or intact D & E). Unlike the case at bar, however, where there is *no* evidence that respondents ever perform medical emergency abortions, the physician who challenged the Nebraska statute actually performed the banned procedure ten to twenty times per year. *Id.* at 928-29 (citing trial testimony). The constitutional challenge in *Carhart* was not theoretical; the challenge here is.

"Severability is of course a matter of state law." *Leavitt v. Jane L.*, 518 U.S. 137, 139 (1996). Would the New Hampshire legislature have passed the parental notice statute if it had known that the statute could not be applied in a few, extremely rare cases where the delay caused by compliance with the law would jeopardize the minor's physical health? The answer, as the statute itself clearly states, is unquestionably yes.

The parental notification act contains a comprehensive severability provision:

> If any provision of this subdivision or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect the provisions or applications of this subdivision which can be given effect without the invalid provisions or applications, and to this end, the provisions of this subdivision are severable.

N.H. REV. STAT. § 132:28 (Supp. 2004).

This provision "restates and affirms the unwritten law" that "the invalidity of any part of [an act] shall not destroy the act as a whole if its general purpose can be carried into effect, notwithstanding such invalidity." *Op. of the Justices*, 190 A. 425, 430 (N.H. 1937). Section 132:28, by its express terms, allows severance of invalid *applications*, as well as invalid *provisions*. Even in the absence of such language, the New Hampshire Supreme Court has recognized that unconstitutional *applications* of a statute may be severed. *See Op. of the Justices*, 190 A. 801, 806 (N.H. 1937) (although "some specified details or applications of [a proposed] bill" might be objected to an constitutional grounds, the

unconstitutionality of such applications "would not invalidate the act in its entirety if its general purpose can still be given effect"); *Woolf v. Fuller*, 174 A. 193, 199 (N.H. 1934) (noting "principle of construction that when a statute . . . is valid in some of its applications, but not in others, it is to be read as though the latter were excepted from its operation") (invalidating statute regulating itinerant vendors as it applied to new, as opposed to established, storekeepers"); *Aldrich v. Wright*, 53 N.H. 398, 399 (1873) (statute prohibiting the destruction of certain fur-bearing animals between May 1st and October 15th could not be constitutionally applied to a landowner who killed minks to protect his geese).[25]

The district court, focusing on the statutory language related to invalid *provisions*, as opposed to invalid *applications*, held that "[t]he lack of a health exception renders the entire Act unconstitutional and, therefore, severing *parts* would not remedy that deficiency." 296 F.Supp.2d 59, 67 (D. N.H. 2003) (emphasis added).[26] The court, however, ignored the statutory mandate that invalid *applications* be severed, as well as invalid *provisions*. When that mandate is followed, as it should be, it is clear that the parental notice act may be constitutionally enforced in virtually all of its applications.

In *Dalton v. Little Rock Family Planning Services*, 516 U.S. 474 (1996), the Court reaffirmed the well-established principle "'that a federal court should not extend its invalidation of a statute further than necessary to dispose of the case before it.'" *Id.* at 476, quoting *Brockett v. Spokane Arcades, Inc.*, 472 U.S. 491, 502 (1985). In *Brockett*, the Court stated that "the normal rule" is that "partial, rather than facial, invalidation is the required course." 472 U.S. at 504. This is the "required course," not only with respect to severance of unconstitutional *provisions*, but also with respect to severance of unconstitutional *applications*. *See Connecticut v. Menillo*, 423 U.S. 9 (1975) (statute that prohibited "any person" from performing an abortion that was not "necessary to preserve [the woman's life]" could be constitutionally enforced against a non-physician).

Thus, in *Brockett*, a state obscenity statute prohibiting both protected and unprotected speech was struck down only in its invalid applications, specifically, the extent to which the word "lust" in the statute could be applied to those materials which elicited a "normal interest in sex." 472 U.S. at 501-05. Similarly, in *Tennessee v. Garner*, 471 U.S. 1 (1985), the Court held that a state statute authorizing the use of deadly force against fleeing suspects was unconstitutional, not on its face, but only insofar as it authorized the use of lethal force against unarmed and nonviolent suspects. 471 U.S. at 11-12.

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[25] The statutory and case law preference for severance of invalid applications has obvious affinities with the rule of constitutional avoidance, which New Hampshire also follows. *See Op. of the Justices*, 41 N.H. 553, 555 (1861) (referring to the "universally adopted" rule of construction "that when a statute may constitutionally operate upon certain persons, or in certain cases, and was not evidently intended to conflict with the constitution, it is not to be held unconstitutional merely because there may be persons to whom, or cases in which, it cannot constitutionally apply; but it is to be deemed constitutional, and to be construed not to apply to the latter persons or cases, on the ground that courts are bound to presume that the legislature did not intent to violate the constitution"); *see also Cheshire County Tel. Co., v. State*, 63 N.H. 167, 169 (1884) (same); *State v. Cox*, 16 A.2d 508, 513 (N.H. 1940) (same). The doctrine of "constitutional avoidance," although not directly applicable here, reinforces the principle that under New Hampshire law, the constitutional applications of a statute should be preserved whenever possible.

[26] In affirming the district court, the court of appeals did not address the severability issue.

And in *United States v. Grace*, 461 U.S. 171 (1983), the Court accepted the argument that a federal statute prohibiting demonstrations on the Supreme Court grounds could not be applied to picketing on the public sidewalks surrounding the building, but rejected the argument that the statute was invalid on its face. 461 U.S. at 174-75, 183. Finally, in *Marsh v. Alabama*, 326 U.S. 501, 509 (1946), the Court struck down a state trespass law only "[i]nsofar as the State has attempted to impose criminal punishment" on those distributing religious literature on the streets of a company town. *See also Cantwell v. Connecticut*, 310 U.S. 296, 307-11 (1940) (invalidating state offense of "breach of the peace," not on its face, but only to the extent that it was construed and applied to prevent the peaceful distribution of religious literature on the streets"); *Wisconsin v. Yoder*, 406 U.S. 205 (1972) (holding Wisconsin's mandatory school attendance law unconstitutional, but only as applied to Amish children who have graduated from the eighth grade). "If the invalid reach of the law is cured, there is no longer reason for proscribing the statute's application to unprotected conduct." *New York v. Ferber*, 458 U.S. 747, 769 n. 24 (1982).[27]

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[27] It must be noted that all but one of the cases cited in this paragraph (*Tennessee v. Garner*) concerned free speech and/or free exercise rights which, unlike abortion, are specifically protected by the *express* language of the Constitution. Yet, even in this area of the law, the Court has been reluctant to invalidate a statute on its face because it is overbroad unless the overbreadth is "substantial . . . , judged in relation to the statute's plainly legitimate sweep." *Broadrick v. Oklahoma*, 413 U.S. 601, 615 (1973). Unlike the free speech cases where the Court has invalidated a statute because of its overbreadth, the circumstances under which the New Hampshire parental notice of abortion act would be unconstitutional, even on the lower court's reading, would be limited to medical emergency abortions which, as the preceding argument demonstrates, are virtually non-existent. The extreme rarity of medical emergency abortions performed on minors simply does not justify a sweeping, wholesale invalidation of a statute

In the case at bar, a declaration of partial invalidity, *i.e.*, that the Act is unconstitutional to the extent that it requires parental notification in medical emergencies (and a limited injunction to enforce that declaration),[28] would allow the Act to be applied in all other circumstances, which is to say virtually *all* applications of the statute. *See* Argument I, *supra*. As evidenced by the severability language in the statute itself, the New Hampshire Legislature would prefer to have the Act enforced in its constitutional applications to not having an Act at all. *See Brockett, supra*, 472 U.S. at 506-07 ("[i]t would be frivolous to suggest . . . that the Washington Legislature, if it could not proscribe materials that appealed to normal as well as abnormal sexual appetites, would have refrained from passing the moral nuisance statute").[29] Here, it would not only be frivolous to make such a suggestion, but directly contrary to the will of the New Hampshire legisla-

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almost all of whose applications would be constitutionally valid. *See Members of the City Council of the City of Los Angeles v. Taxpayers for Vincent*, 466 U.S. 789, 800 (1984) ("the mere fact that one can conceive of some impermissible applications of a statute is not sufficient to render it susceptible to an overbreadth challenge") (Op. of Stevens, J). *See also Atkins v. Virginia*, 536 U.S. 304 (2002) (holding that capital punishment may not be imposed on mentally retarded criminal defendants, but not striking down the death penalty on its face).

[28] The injunction could be drafted to conform to the definition of medical emergency upheld in *Planned Parenthood v. Casey*, *see* p. 8, n. 3, *supra*.

[29] *See also New York Central & Hudson River R.R. Co. v. U.S.*, 212 U.S. 481, 496-97 (1909) (holding that Congress would have wanted the Elkins Act applied to corporate common carriers engaged in interstate commerce even if individual carriers constitutionally could not be covered by the same Act).

ture.[30] To paraphrase what the Court said in *Leavitt v. Jane L.*, *supra*, 518 U.S. at 143-44, the relevant question is *not* whether the legislature would prefer to have the parental notice statute given effect in *all* of its applications, as opposed to only *some* of them (obviously, it would), but whether the legislature would prefer to have the overwhelming majority of applications of the statute given effect, if it could not apply the statute to the miniscule (perhaps null) class of medical emergencies involving pregnant minor patients. There is no need to speculate on how the legislature would answer this question–it already has in enacting the severability provision.

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[30] Nothing in *Stenberg v. Carhart*, *see* p. 21, n. 24, *supra*, precludes the limited relief *amicus* suggests would be appropriate here (assuming that the Court determines that respondents have standing to challenge the parental notice law and that the law must have a medical emergency exception that includes serious threats to the pregnant minor's physical health). In *Stenberg*, the Court declared the Nebraska partial-birth abortion statute unconstitutional on its face, in part because it lacked a physical health exception. *See Stenberg*, 530 U.S. at 930-38. The state Attorney General, however, did not ask the Court to restrict its relief to a declaration of invalidity (and an accompanying injunction against enforcement tailored to such a declaration) that would have addressed only the unconstitutional applications of the statute (physical health reasons where the intact D & E procedure would be relatively safer for the patient). Moreover, given the Court's alternative basis for invalidating the statute (that it imposed an undue burden on women seeking second-trimester abortions, *see id.*, at 938-45), such a limited declaration (and injunction) would not have been a viable option.

CONCLUSION

For the foregoing reasons, *amicus curiae*, the Thomas More Society, respectfully requests this Honorable Court to reverse the judgment of the Court of Appeals. Alternatively, *amicus* requests the Court to modify the lower court's judgment by declaring the New Hampshire Parental Notice Prior to Abortion Act unconstitutional and enjoining its enforcement only to the extent that it does not allow medical emergency abortions to be performed on pregnant minors.

Respectfully submitted,

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APPENDIX A

IDAHO DEPARTMENT OF

HEALTH & WELFARE

DIRK KEMPTHORNE - Governor
KARL B. KURTZ - Director

Jane S. Smith - State Registrar and Chief
BUREAU OF HEALTH POLICY AND VITAL STATISTICS
450 West State Street, 1st Floor
P.O. Box 83720
Boise, ID 83720-0036
PHONE 208-334-5980
FAX 208-332-7260

AFFIDAVIT - CERTIFICATION OF PUBLIC RECORD

STATE OF IDAHO)
) ss.
County of Ada)

Jane S. Smith, being duly sworn on oath, deposes and states as follows:

1. That your Affiant is the custodian of records for the Idaho Department of Health and Welfare, having been delegated that task from the Director of the Department of Health and Welfare.

2. That your Affiant has reviewed the attached compilations of information submitted to the Department on induced abortion reporting forms.

3. That your Affiant declares as custodian of records that the annexed document(s) are true and correct copies of public records, maintained in the normal course of business in a timely manner and are authentic and genuine

4. That your affiant hereby certifies the annexed documents as correct, that said documents are authorized by Idaho Code § 39-261(b), and that said documents are maintained on file in the Idaho Department of Health and Welfare offices at 450 West State Street, Boise, Idaho.

5. Further, your Affiant sayeth naught.

DATED this 29th day of June, 2005.

/s/ Jane S. Smith
Jane S. Smith
Custodian of the Records
Idaho Department of Health and Welfare

SUBSCRIBED AND SWORN to before me this 29th day of June, 2005.

/s/ Davalee Leavitt
Notary Public for Idaho
Residing at : Boise ADA ID
Commission Expires: Jan 10, 2011

[NOTARY SEAL]

INDUCED ABORTIONS OCCURRING IN IDAHO
Age <18, Informed Consent or Medical Emergency
2000–2003 and 2004 Preliminary

INFORMED CONSENT	2000*	2001	2002	2003	2004 Preliminary
Total Induced Abortions Occurring In Idaho, Females Aged <18	60	58	69	50	69
Written Informed consent of:					
A Parent and minor	15	55	65	49	68
Emancipated minor	1	–	1	–	–
Pursuant to Court order granting minor right to self-consent	–	3	3	1	1
Pursuant to order stating abortion is best interests of minor, despite absence of parental consent	–	–	–	–	–
Unknown, not stated	–	–	–	–	–
Medical Emergency	–	–	–	–	–
Induced Abortions Occurring Prior to Informed Consent Legislation*	44	N/A	N/A	N/A	N/A

* Legislation requiring written parental consent for patients under 18 years of age was enacted in 2000. The first full month data were collected on parental consent and medical emergency was October 2000.

2004 data are preliminary and may differ slightly from final data.

Data are based on the most current information available and may not match data previously published, due to updates in the data base.

Source: Idaho Department of Health and Welfare, Bureau of Health Policy and Vital Statistics (June 2005).

NEBRASKA HEALTH AND HUMAN SERVICES SYSTEM

DEPARTMENT OF SERVICES
DEPARTMENT OF REGULATION AND LICENSURE
DEPARTMENT OF FINANCE AND SUPPORT

STATE OF NEBRASKA
DAVE HEINEMAN, GOVERNOR

July 26, 2005

Paul Linton, Esq.
921 Keystone Avenue
Northbrook, Illinois 60062-3614

Dear Mr. Linton:

Since 1991, when the parental notice law for minors was enacted, there have been only two "emergency situations" involving minors reported to the Nebraska Health & Human Services System (NHHSS) for which compliance with the informed consent law was waived. One of these instances was reported in 1997 and the other in 1998. There were no cases involving minors for which compliance was waived for the years 1991-1996, and 1999-2004.

This information is based on reports submitted to and data maintained by the NHHSS pursuant to state law. "Medical Emergency" abortions under the parental notice law are not reported separately from "Emergency Situation" abortions under the informed consent law.

Sincerely,

/s/ Mark Miller
Mark Miller
Health Data Coordinator
NHHSS, Regulation & Licensure
301 Centennial Mall South
PO Box 95007
Lincoln, NE 68509-5007

D H E C

PROMOTE PROTECT PROSPER
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Coleman F. Buckhouse, MD

June 23, 2005

Paul Linton
921 Keystone Avenue
Northbrook, IL 60062

Dear Mr. Linton:

As per our telephone conversations, enclosed is a table showing abortions occurring in South Carolina to girls under the age of 17 by the variable "medical emergency" for calendar years 1997-2003. You will note that no reported abortion occurred as a result of a medical emergency for that age group.

If you have any questions or need additional assistance, please let us know.

Sincerely,

/s/ Mary Hill Glover

Mary Hill Glover
Assistant Manager
Data Quality & Management Branch
Division of Biostatistics

Enclosure

ABORTIONS OCCURRING IN SOUTH CAROLINA TO GIRLS LESS THAN 17 YEARS OF AGE BY A SELECT PROCEDURE TYPE, 1997–2003

YEAR	MEDICAL EMERGENCY	TOTAL NUMBER
1997	–	463
1998	–	381
1999	–	352
2000	–	351
2001	–	281
2002	–	244
2003	–	282
TOTAL		2,354

Prepared by: Division of Biostatistics and Health GIS, Public Health Statistics & Information Services, South Carolina Department of Health and Environmental Control, Columbia, SC 29201

ATTEST: These data were tabulated form official Induced Termination of Pregnancy reports (abortions) filed with the South Carolina Department of Health and Environmental Control

DATE: June 23, 2005 /s/ Murray B. Hudson

Murray B. Hudson M.P.H.
Director of Public Health
Statistics and Information
Services

TEXAS DEPARTMENT OF STATE HEALTH SERVICES

EDUARDO J. SANCHEZ, M.D., M.P.H.
COMMISSIONER
1100 W. 49th Street • Austin, Texas 78756
1-888-963-7111 • http://www.dshs.state.tx.us

June 28, 2005

Joe Pojman, Ph.D.
Executive Director
Texas Alliance for Life
2026 Guadalupe Street
Austin, Texas 78705-5609

Via Facsimile 512/472/6246
& First Class Mail

Re: Open Records Request of June 2, 2005

Dear Dr. Pojman:

The Department of State Health Services ("Department") has received your recent open records request regarding the number of emergency induced abortion certification forms submitted to the department during the years 2000 through 2005. The total number of minors receiving abortions without parental notification due to emergency circumstances is defined under TEX. FAM. CODE ANN. §33.002(a)(4) for each reporting year. A thorough review of the department's records indicated that the agency received no Emergency Induced Abortion Certification forms from Texas physicians for reporting years 2000–2005 (to date).

The department having no records responsive to your request will close its file. Please contact our office should you have any questions.

Sincerely,

/s/ Marc Allen Connelly
Marc Allen Connelly
Assistant General Counsel